

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

GTE Service Corporation, GTE Alaska)
Incorporated, GTE Arkansas Incorporated,)
GTE California Incorporated, GTE Florida)
Incorporated, GTE Midwest Incorporated,)
GTE South Incorporated, GTE Southwest)
Incorporated, GTE North Incorporated,)
GTE Northwest Incorporated, GTE Hawaiian)
Telephone Company Incorporated, GTE West)
Coast Incorporated, Contel of California, Inc.,)
Contel of Minnesota, Inc. and Contel of the)
South, Inc.)

Petitioners,)

v.)

Federal Communications Commission and)
United States of America,)

Respondents.)

Case No. _____
(DC Circuit Case No. 96-1319)
(Consolidated with Case No. 96-3321)

SUPPLEMENTAL AFFIDAVIT OF DENNIS B. TRIMBLE

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Dennis B. Trimble, being duly sworn according to law, states as follows:

1. My name is Dennis B. Trimble and I am the Assistant Vice President - Marketing Service (Acting) for GTE Telephone Operations ("GTE" or "the Company"). In that capacity I

am responsible for, among other matters, analyzing the demand characteristics of GTE's regulated product offerings and developing costs, prices and associated tariff filings for all of GTE's regulated services, inclusive of tariff filing activity with the FCC.

2. I have over 20 years experience with GTE. During this time I have held various positions throughout the Company, almost all related to demand analysis, market research, forecasting, and/or the pricing of regulated telecommunication services. I have a B.A. in Business (1970) and an M.B.A. (1973) both from Washington State University. In 1972, I became an Assistant Professor at the University of Idaho, where I taught courses in statistics, operations research and decision theory. From 1973 through 1976, I completed course work toward a Ph.D. degree in Business at the University of Washington, majoring in quantitative methods with minors in computer science, research methods, and economics.

3. I have reviewed in detail the Federal Communications Commission's ("FCC") *First Report and Order* in CC Docket No. 96-98 which was issued on August 8, 1996. Among other things, the *First Report and Order* establishes (at ¶¶ 789-827) default proxy ceiling prices that are to be used after an arbitration proceeding as the price for unbundled network elements unless a state regulatory agency has completed its review of studies that comport to the FCC's prescribed, new costing methodology.

4. I previously provided an affidavit (*Original Trimble Affidavit*) that was attached to the Joint Motion of GTE Corporation and the Southern New England Telephone Company for Stay Pending Judicial Review filed with the FCC ("*GTE/SNET FCC Motion*"). The *Original Trimble Affidavit* had two main purposes: (i) to describe the GTE cost studies submitted in a

Florida Public Service Commission ("FPSC") proceeding that were used by the FCC in developing a proxy for the outcome of a study conducted according to its new cost methodology; and (ii) to compare the forward-looking cost studies typically prepared by GTE with the new, forward-looking costing methodology required by the *First Report and Order*. To recap that discussion, GTE's forward-looking cost studies use a Total Service Long Run Incremental Cost ("TSLRIC") methodology. The *First Report and Order* requires use (at ¶¶ 672-703) of a methodology the FCC calls Total Element Long Run Incremental Cost ("TELRIC"). The primary difference lies in the allocation of common costs that cannot be directly assigned to a particular service or network element. GTE's methodology would assign all common costs to various services during the pricing process, using a method based on the market-allowed contribution levels. The FCC's methodology assigns as much of the common costs as possible to each network element if there is any possible reasonable relationship that can be used for assignment. For the remaining costs for which a reasonable relationship simply does not exist (e.g., the company president's salary), the *First Report and Order* describes (at ¶¶ 694-699) a pricing development procedure using "reasonable" allocation methodologies (e.g., uniform percent markup).

5. The *Original Trimble Affidavit* demonstrated that the FCC's reliance upon the GTE Florida study output as a reasonable approximation of the cost estimates that would be produced by a study conducted using the new FCC methodology was flawed. It further showed that the result of a cost study based on the FCC methodology will be higher than that of the GTE

study because a greater amount of common costs are assigned in the costing process, rather than in the pricing process. Yet inexplicably, the FCC's proxy price ceilings are set substantially lower than either the purely incremental costs produced by GTE's methodology (that do not include common costs), or those incremental costs adopted by the FPSC that allowed a very small allocation of common costs.

6. The three purposes of this supplemental affidavit are: (i) to discuss the serious flaws in the FCC's loop proxy price development process; (ii) to compare the results of cost studies prepared using the FCC's prescribed methodology that GTE has completed during the period following the filing of the *GTE/SNET FCC Motion* with the FCC's mandatory proxy price ceilings; and (iii) to compare the revenues that would be obtained using the FCC's proxy prices from an average residence or business service in GTE's California service area to both the revenues generated from elements priced at TELRIC and to current average per line revenues. As the attached Exhibits 1 and 2 demonstrate, when GTE adheres to the FCC's prescribed costing methodology, the costs that result are much higher than the mandatory proxy ceiling prices. Specifically, GTE's loop costs average at least 50 percent larger than the FCC's ceiling price. As described following, this result is not startling because the FCC based its statewide average loop proxy price calculations on inputs that do not represent actual statewide average loop costs. GTE's unbundled end office switching costs average at least two-and-a-half times the FCC's price ceiling of \$0.004 per minute, even when all possible switching features and functions are not included. Moreover, as Exhibit 3 shows, when GTE compares the revenues that would be

obtained from the FCC's proxy prices to either the revenues from elements priced at the TELRICs computed by GTE or to current revenues per line, it is clear that a large gap exists. It is also obvious that the effective discount from the equivalent retail service price using the FCC proxy prices is much larger than the discount ceiling established by the FCC for resold services.

7. The *First Report and Order* specified (at ¶ 744) that the rate for unbundled local loops be a flat, per-month charge. Further, the FCC specified (at ¶ 794, Appendix D) the statewide average ceiling price that a state regulatory agency could adopt in an arbitration proceeding unless the state commission had completed its review of cost studies that comport to the FCC methodology.

8. The FCC's derivation of loop proxy prices is seriously flawed and cannot in any way be portrayed as representative of GTE's loop costs. The FCC used three sets of 6 numbers (or 18 numbers in total) to calculate the loop proxy price. First, the FCC used the loop prices adopted by 6 state commissions (Colorado, Connecticut, Florida, Illinois, Michigan, Oregon). GTE does not operate in two of those states, and the state agency decisions in three of the four other states involved only the regional Bell Operating Company ("BOC"). The FCC's use of prices developed for BOC serving areas is surprising on its face, because the *First Report and Order* (at n.1877) recognized that there "is a strong (negative) correlation between population density and the loop costs." (This simply means that the higher the population density, the lower the cost, and the lower the population density, the higher the cost.) Because BOC serving areas are far more densely populated than GTE's serving areas, this alone seriously understates the

proxy price that would be representative for GTE. Moreover, the involved state commissions did not rely upon cost study methodologies that were anywhere close to the FCC's prescribed methodology.

9. Second, the FCC used the results of two cost models, the Benchmark Cost Model (BCM) and the Hatfield 2.2 model for the same 6 states. This is also surprising because the *First Report and Order* admits (at ¶ 835) that both of these models "were submitted too late in this proceeding for the Commission and parties to evaluate them fully." And, GTE's preliminary evaluations of each model reveals that both systematically produce absurdly low cost estimates. The BCM model does not contain the service drop (the wire from the end of the cable to the customer premises) or other vital loop cost components (e.g., cross-connects, splice pedestal terminals, splicing). GTE has already described the numerous shortcomings of the Hatfield 2.2 model, including the fact that it understates loop costs by at least \$8 per loop. (See *First Report and Order* at ¶ 831)

10. Third, the FCC used these 18 numbers in an extremely simplistic calculation methodology. It calculated a proxy price by averaging the results of two calculations for each state and increasing that average by 5 percent. The two calculations were the result of multiplying the BCM and Hatfield 2.2 cost estimates by a so-called "scaling factor." The "scaling factor" was derived by dividing the simple average of the 6 state commission prices by the sum of the average of the BCM and the Hatfield 2.2 estimates for the same 6 states.

Mathematically, this is expressed as:

$\text{Proxy Price}_{\text{state } i} = ((\text{Proxy Price}_{\text{BCM for state } i} + \text{Proxy Price}_{\text{Hatfield 2.2 for state } i}) \text{ divided by } 2)$

times 1.05, where

$\text{Proxy Price}_{\text{BCM for state } i} = (\text{BCM estimate for state } i) \text{ times } ((\text{average of 6 state prices}) \text{ divided by } (\text{average of 6 state BCM estimates})), \text{ and}$

$\text{Proxy Price}_{\text{Hatfield 2.2 for state } i} = (\text{Hatfield 2.2 estimate for state } i) \text{ times } ((\text{average of 6 state prices}) \text{ divided by } (\text{average of 6 state Hatfield 2.2 estimates})).$

11. Because the state commission prices were not representative of statewide averages, and were in fact based predominately on BOC data, the FCC clearly erred in relying upon those prices to compute statewide average proxy prices. Further, because both the BCM and Hatfield 2.2 models are fundamentally flawed and have not been rigorously review by the FCC or by the parties subjected to the results of calculations based upon those models, the FCC clearly erred in relying upon those cost estimates.

12. GTE's TELRIC cost studies are based upon the methodology prescribed by the *First Report and Order* (at ¶¶ 672-702). GTE first calculated the direct forward-looking cost-of each network element. GTE then determined the common costs that could not be attributed to any particular element or sub-group of elements. According to the FCC's methodology, these latter costs are to be allocated to all network elements during the pricing process.

13. Exhibit 1 shows the results of the GTE cost studies for loops in several states where GTE serves a large number of customers. The cost developed using a TELRIC

methodology averages 50 percent larger than the FCC's proxy ceiling price. This difference clearly supports my conclusion in the *Original Trimble Affidavit* (at ¶ 9-14) that the FCC's loop proxy price is arbitrary and inappropriate because it is based upon a mixture of cost estimates for only the bare incremental cost of a loop, rather than being based upon a TELRIC methodology. Further, to assure a proper comparison, neither the proxy price nor the GTE TELRIC results described above include any allocation of common costs as the FCC's own cost methodology requires. Exhibit 2 also shows a comparison of the FCC proxy prices with the output of a new version of the BCM, called BCM II. The BCM II was developed in response to various criticisms of the BCM. Thus, BCM II should be more reflective of forward-looking loop costs than BCM. In the ten GTE serving areas, the BCM II estimates are more than double the proxy prices. This result also supports my conclusion that the FCC's loop proxy prices are woefully low.

14. The *First Report and Order* specified (at ¶ 412) that the unbundled local switching network element is to include not only line-to-line and line-to-trunk "basic switching," but also all of the features, functions, and capabilities, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services and directory assistance, all vertical features including custom calling and CLASS features, Centrex, and any technically feasible customized routing functions. The unbundled local switching rate structure is required to include "a combination of a flat-rated charge for line ports, which are dedicated to a single new entrant, and either a flat-rate or per-minute usage charge for the switching matrix and for trunk ports, which constitute shared facilities, best reflects the way costs for unbundled local

switching are incurred." *Id.* at ¶ 810. Unless a state regulatory agency has completed its review of cost studies that comport with the FCC's costing methodology, state agencies are required (*Id.* at ¶ 815) to set the rate for unbundled local switching "so that the sum of the flat-rated charge for line ports and the product of the projected minutes of use per port and the usage-sensitive charges for switching and trunk ports, all divided by the projected minutes of use, does not exceed 0.4 cents (\$0.004) per minute of use and is not lower than 0.2 cents (\$0.002) per minute of use."

15. Exhibit 2 compares the FCC's proxy price for unbundled local switching to the results of cost studies prepared by GTE using the FCC's TELRIC methodology. Shown are GTE's cost estimates for three end office switching cost elements for a number of states where GTE serves a large number of customers. Those elements are: (i) a per minute cost to switch a call; (ii) a per line per month cost for the non-usage sensitive components of a switch (*e.g.*, line card); and (iii) a per line per month cost for a representative feature package. The cost element of a per line, per month cost for the feature package was chosen to comply with the FCC's mandate that a rate structure recover costs "in a manner that efficiently apportions costs among users." *First Report and Order* at ¶ 755. It is very important to note that the feature package selected for illustrative purposes does not include all of the features, functions and capabilities that a switch may be capable of providing. The package selected includes only many of the most commonly used features (*e.g.*, Call Waiting, Emergency Bureau Access, Speed Calling, Time of Day Routing). Also not included in any of the three cost estimates in Exhibit 2 are the costs associated with a directory listing or the more esoteric switch features such as customized routing

and Meet-Me Conference Bridging. The feature package used in calculating the cost for two states shown in Exhibit 2, Ohio and Wisconsin, did include additional, more advanced features, just to show the potential cost impact on a per minute basis.

16. To provide a logical comparison, GTE converted the two per line, per month cost elements into an equivalent per minute cost by dividing by the average switched minutes of use per month, including minutes associated with both local and long distance calls. The result of this calculation is a composite TELRIC per minute cost that is three-and-a-half times the FCC's upper price ceiling of \$0.004, even when ignoring the two states with feature packages that include extraordinary features. These results confirm my conclusion in the *Original Trimble Affidavit* (at ¶¶ 17-20) that the FCC's local switching proxy price was based upon information that estimated the incremental cost of line-to-line or line-to-trunk basic switching, but did not, as the FCC's own methodology requires, include either the costs related to other switch features and functions, or common costs.

17. Exhibit 3 compares the FCC's proxy price for a combination of unbundled local switching and an unbundled local loop (*i.e.*, the reassembled equivalent of local service) to both the results of a GTE California ("GTEC") TELRIC study, and to current average revenues per line in California. To prepare this comparison, GTE derived the average monthly usage per line, including local and toll minutes of use, for an average of residence and business lines. This average number of minutes was multiplied by the FCC's proxy price ceiling of \$0.004 per minute, and that switched usage revenue amount was added to the flat rate components that would also be needed to comprise reassembled local service (*i.e.*, a local loop and a Network

Interface Device, or "NID"). GTE also derived the current revenues per line for an average of California residence and business lines, including flat rate local charges, local and toll usage charges, and vertical feature charges. When the unbundled network elements of switching, a loop and a NID are combined to replicate local service, the revenues from those elements when priced at the FCC's proxy rates are approximately half of GTEC's TELRIC for the combined service (Exhibit 3, \$18.88 compared to \$36.35 per month). This comparison of price to cost understates the shortfall, because by definition TELRIC does not include an allocation of common costs. Further, the FCC's proxy prices would provide new entrants with approximately a 60 percent discount off GTEC's current average retail revenue per line in California (Exhibit 3, \$18.88 compared to \$46.31 per month). Clearly neither the FCC proxy price nor the TELRIC methodology come anywhere close to providing revenues that cover GTE's cost of providing service.

18. Moreover, the 60 percent discount that results from the FCC proxy price cannot be squared with the FCC's interim wholesale rates. Section 51.611 of the FCC's rules requires that resale discounts should be "no more than 25 percent." Thus, the FCC's proposed requirements for its two pricing mechanisms (resale and unbundling) are totally inconsistent. The potential discount is significantly below the Company's costs and would result in GTE subsidizing competitive entry.

19. Based upon my review of the FCC's *First Report and Order* and the results of studies GTE has conducted using the FCC's own costing methodology, I am convinced that the FCC's proxy price ceilings for unbundled loops and local switching are significantly below the

cost of providing those network elements, and in absolute conflict with §§ 51.319(c)(1)(C),
51.503 and 51.505 of the FCC's rules.

The affiant says nothing further.


Dennis B. Trimble

Subscribed and sworn to
before me this 15th day of
September, 1996.



Notary Public



Exhibit 1

Supplemental Affidavit of Dennis B. Trimble

Comparison of Loop Proxy Price Ceilings

with

Costs Developed

Using the FCC's Prescribed Methodology,

and with

Benchmark Cost Model Results

Exhibit 1

LOOPS

| STATE | FCC LOOP PROXY CEILING PRICE (a) | GTE's TELRIC UNBUNDLED LOOP (b) | RATIO: PROXY PRICE TO TELRIC (c = b / a) | BCM II COST * (e) | RATIO: PROXY PRICE TO BCM II (f = e / a) |
|--------------|--|---|---|-------------------------|---|
| California | \$11.10 | \$23.09 | 2.08 | \$21.56 | 1.94 |
| Florida | \$13.68 | \$21.94 | 1.60 | \$25.44 | 1.86 |
| Hawaii | \$15.27 | \$18.66 | 1.22 | \$25.72 | 1.68 |
| Illinois | \$13.12 | \$22.82 | 1.74 | \$34.43 | 2.62 |
| Michigan | \$15.27 | \$19.54 | 1.28 | \$37.00 | 2.42 |
| Ohio | \$15.73 | \$20.28 | 1.29 | \$36.00 | 2.29 |
| Pennsylvania | \$12.30 | \$19.04 | 1.55 | \$29.07 | 2.36 |
| Texas | \$15.49 | \$22.46 | 1.45 | \$28.98 | 1.87 |
| Washington | \$13.37 | \$22.20 | 1.66 | \$28.23 | 2.11 |
| Wisconsin | \$15.94 | \$19.15 | 1.20 | \$39.05 | 2.45 |

* GTE analysis indicates that the BCM II default assumptions cause its resulting loop cost to be understated by as much as \$5 to \$10 per loop, depending on the state. For example, the default assumptions for conduit and drop wire installation costs are much lower than a contract GTE had with Lucent Technologies for those activities. Note also that BCM II includes an allocation of common costs.

Exhibit 2

Supplemental Affidavit of Dennis B. Trimble

Comparison of End Office Switching Proxy Price Ceilings

with

Costs Developed

Using the FCC's Prescribed Methodology

Exhibit 2

END OFFICE SWITCHING

| STATE | TELRIC PER MINUTE (a) | TELRIC PER PORT (b) | TELRIC FEATURE PACKAGE (c) | COMPOSITE TELRIC PER MINUTE (d = a + ((b + c) / MOU)) | RATIO: TELRIC TO FCC \$0.004 UPPER BOUND (e=d/\$0.004) |
|--------------|--------------------------------|------------------------------|-------------------------------------|--|--|
| California | 0.0034840 | \$4.63 | \$2.61 | \$0.0107 | 2.68 |
| Florida | 0.0033592 | \$4.51 | \$6.90 | \$0.0179 | 4.47 |
| Hawaii | 0.0073493 | \$5.22 | \$6.69 | \$0.0244 | 6.09 |
| Illinois | 0.0041515 | \$3.78 | \$2.02 | \$0.0106 | 2.65 |
| Michigan | 0.0031419 | \$3.63 | \$4.06 | \$0.0119 | 2.99 |
| Ohio * | 0.0030980 | \$4.46 | \$15.29 | \$0.0262 | 6.54 |
| Pennsylvania | 0.0027488 | \$4.79 | \$2.39 | \$0.0120 | 2.99 |
| Texas | 0.0035126 | \$4.39 | \$4.90 | \$0.0147 | 3.68 |
| Washington | 0.0034332 | \$3.15 | \$2.08 | \$0.0096 | 2.40 |
| Wisconsin * | 0.0028151 | \$4.58 | \$10.04 | \$0.0208 | 5.21 |

* Nonstandard feature packages

Exhibit 3

Supplemental Affidavit of Dennis B. Trimble

Comparison of Loop and Switching Proxy Prices

with

Costs Developed Using the FCC's Prescribed Methodology

and with

Current Average Revenues per Line in California

**COMPARISON OF PROXY PRICES
WITH
GTE CALIFORNIA TELRIC AND REVENUES**

| | TELRIC | FCC Proxy Prices | Current GTE Avg Rev per Line per Mo | |
|--------------------------|---------|---------------------|-------------------------------------|----------------|
| Local Loop | \$23.09 | \$11.10 | Local Service Price | \$21.53 |
| Network Interface Device | \$2.54 | \$2.54 | Switched Access | \$6.28 |
| Switching | \$10.72 | \$4.00 | 100% TIC | \$1.65 |
| 75% TIC | n/a | <u>\$1.24</u> | Local Switching | \$4.12 |
| | | | Vertical Services | \$1.92 |
| | | | IntraLATA Toll | <u>\$10.80</u> |
| Per Line | \$36.35 | \$18.88 | Total Revenues | \$46.31 |

Notes: Switched access transport excluded from costs & revenues above.
Carrier Common Line Charge revenues excluded from all calculations.
Subscriber Line Charge revenues included in average rate per switched access line.
TIC = Transport Interconnection Charge

TAB C

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GTE Service Corporation, GTE Alaska)
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AFFIDAVIT OF ORVILLE D. FULP

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Orville D. Fulp, being duly sworn according to law, states as follows:

1. My name is Orville D. Fulp and I am Director-Network Access Services for GTE Telephone Operations. In that capacity I am responsible for the development, introduction, and management of GTE network access products and services in the interexchange carrier market segment.

2. I have over 10 years experience with GTE. During this time I have held various positions, almost all related to pricing, regulatory, and product management functions.

3. I have reviewed the Federal Communications Commission's ("FCC") *First Report and Order* in CC Docket No. 96-98 which was issued on August 8, 1996. Among other things, the *First Report and Order* concludes (at ¶ 411) that end office switching should be available on an unbundled basis due to the FCC's perception of the difficulties that new market entrants face in obtaining their own capability, i.e. so-called "bottleneck" capabilities. This order also establishes default proxy ceiling prices that state regulatory agencies must adopt during arbitration proceedings for unbundled network elements unless or until a state regulatory agency has completed its review of studies that comport to the FCC's prescribed costing methodology.

4. The purpose of this affidavit is: (i) to describe the widespread availability of facilities that shows that the FCC's conclusion regarding the availability of end office switching is not borne out in fact; and (ii) to show the rapidity with which GTE's existing customers will be lost due to the combination of the existing capabilities of competing local exchange service providers ("CLECs") and the uneconomic prices the FCC mandates be used for unbundled network elements.

5. GTE will suffer irreparable harm because the proxy prices mandated by the *First Report and Order* provide CLECs with artificially low and uneconomic cost structures that allow them to undercut GTE's prices at will and win large numbers of customers. The primary factor contributing to this loss of customers will not be the efficiency or resourcefulness of these firms, but rather their artificial cost advantage. Further, GTE cannot respond with price reductions of its own for the retail services that equate to a combination of unbundled elements,

because the *First Report and Order* also requires (at ¶ 932) GTE to resell any retail offering at a huge discount off the retail price. This circular process allows competitors to choose the lower of a combination of unbundled element prices, or the wholesale (resale) price. This means that GTE can never compete on the basis of price since the below-cost proxy price serves as the driver for the entire process. Thus, the practical effect of the mandatory use of the FCC's below-cost proxy prices is that GTE must subsidize the market entry of its competitors.

6. There are many existing CLECs that are already in place and poised to take advantage of the FCC's below-cost proxy prices. As shown in Exhibit 1 attached to this affidavit, there are 289 CLECs with state regulatory approval to offer local exchange service in 20 states where GTE operates, and 184 other CLECs in 26 states that are in various stages of obtaining permission from state regulatory agencies. Exhibit 1 also shows that there are 34 existing colocation arrangements in place in GTE central offices, and another 46 colocation arrangements in the process of construction. A colocation arrangement allows a CLEC instant access to any customer served from that central office because the CLEC can connect its facilities directly to the incumbent local exchange carrier ("ILEC") unbundled loop facilities that link a customer to the network. Furthermore, ILECs are required by the *First Report and Order* (at ¶1565, 590) to provide colocation arrangements, including a new form of colocation that combines only unbundled ILEC facilities to create a colocation arrangement. Thus, colocation arrangements will quickly become more commonplace because CLECs do not need to construct any network facilities to obtain colocation.

7. End office switching is neither a difficult function to replicate, nor is it prohibitively expensive. In fact, many new local service market entrants currently have end

office switching capability, either through self-supply or from other new entrants. Exhibit 2 shows there are 27 end office switches owned by CLECs that are currently in place within or near GTE serving areas. This list is in no way all inclusive, but shows only known, publicly announced switches. Further, Exhibit 2 contains other recent announcements published in industry and other periodicals that reveal plans regarding the installation of additional switches. These facts show that end office switching is readily available to any CLEC. This conclusion has been recognized by the Florida Public Service Commission:

[Switch] ports may not be in high demand from the LECs and [we] believe that they may be more widely available from alternative sources. Many ALECs own their switches, can provide their own ports, and can resell them to other ALECs as well.¹

8. There are many locations, particularly in urban areas with high volume business customers, where CLECs have been particularly active in constructing their own facilities. Exhibit 3 consists of two maps that show one of many GTE service areas where CLECs have installed end office switching capability, and/or fiber ring loop facilities, and/or have obtained colocation from GTE. In a Part 69 Waiver filing made with the FCC, GTE has demonstrated that, in California alone, less than one percent of customers generate greater than 22% of the minutes of use.² Thus, new entrants can and will be targeting selected high volume

1 In Re: Resolution of Petition(s) to Establish Nondiscriminatory Rates, Terms, and Conditions for Resale Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.161, F. S., Florida Public Service Commission Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, Issued June 24, 1996, at 18.

2 GTE Telephone Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Geographically Deaverage Switched Access Services, filed November 27, 1995, at Exhibit 2.

customers, and will be able to immediately provide service using their own facilities, or a combination of their own and GTE network elements.

9. CLECs with existing switching facilities and associated infrastructure support systems (e.g., ordering, billing) are particularly well positioned because they can quickly add new customers by simply connecting ILEC loops (possibly through the use of their own transport or ILEC transport available from tariffs today) to their existing switch. However, because the *First Report and Order* permits (at ¶410) CLECs without switching facilities to use unbundled ILEC switching, those firms can also reach large numbers of customers by establishing their business systems based upon use of ILEC facilities. This step is not an insurmountable obstacle, but only reflects the normal start-up interval that any new market entrant will experience, whether the market involves telecommunications or other services. Thus, existing or new CLECs can quickly reach a very substantial number of customers using either their own facilities, or a combination of their facilities and those of an ILEC or another CLEC, or through exclusive use of ILEC network elements.

10. These facts set forth in paragraphs 6-9 above show that: (i) CLECs are already present in large numbers and offering service today; (ii) many other CLECs are poised to enter the market; (iii) CLECs have extensive existing switching capability and loop facilities; (iv) CLECs are actively constructing additional facilities; and (v) CLECs can quickly capture customers by using only ILEC unbundled network elements.

11. Section 252 of the Telecommunications Act of 1996 ("1996 Act") establishes a process wherein CLECs and ILECs negotiate arrangements to interconnect their networks. If these negotiations cannot reach agreement, a schedule for arbitration by the state regulatory

agency is established. See §252(b). This schedule is keyed to the date of a request for interconnection, and proceeds separately and independently from the FCC's activities. The schedule established by the 1996 Act calls for interconnection agreements to be in place no later than ten months after a request for interconnection is made. See §§ 252(b) and (e)(4). As the McLeod Affidavit (at Exhibit 3) attached to the Joint Motion of GTE Corporation and the Southern New England Telephone Company for Stay Pending Judicial Review filed with the FCC ("*GTE/SNET FCC Motion*") demonstrates, GTE is currently engaged in 23 arbitration proceedings in 20 states. All of these arbitrations must be completed no later than December 12, 1996, and the resulting agreements will become effective no later than January 12, 1997. Thus, on or before that date, a large number of CLECs will have the ability to use GTE's unbundled network elements to provide service to customers using the price level established in the arbitration process.

12. The FCC's *First Report and Order* mandates that a state regulatory agency adopt the proxy ceiling prices for unbundled network elements during the arbitration process unless that state agency has completed its review of cost studies that comport with the FCC's costing methodology. CLECs such as AT&T are already arguing that because the FCC's costing methodology is brand new, and because the state regulatory agencies have not completed studies consistent with the FCC's standards, the state regulatory agencies should simply implement the FCC's proxy prices.

13. As documented by the Supplemental Trimble Affidavit (at ¶¶ 9-10, Exhibit 2), the proxy prices established by the FCC for unbundled switching are far below GTE's forward-looking cost to provide that element. The composite cost per minute (both usage and